



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000601

06/17/2003

counsel and acknowledged the trial date which was scheduled for September 19, 2002. However, at the time scheduled for trial, Appellant did not appear, but an attorney, Carroll Clark, appeared on his behalf. Appellant's trial counsel filed a Motion to Continue the trial, on the day of trial. The trial judge denied Appellant's counsel's Motion to Continue the trial, and the trial proceeded on September 19, 2002, in the absence of the Appellant. Appellant was found guilty and sentenced October 15, 2002, to pay a fine of \$1,000.00. Appellant has filed a timely Notice of Appeal in this case.

The first issue raised by the Appellant is that the trial judge erred in failing to grant his attorney's Motion to Continue the trial, and denied Appellant his rights to due process by conducting the trial in absentia. Appellant claims he was denied due process of law because the trial judge did not allow him to present his defense, his testimony, and the testimony of his witnesses. However, Appellant's due process argument must fail because he was provided personal notice of the trial date, and chose not to appear. Appellant waived his right to be present, to testify, and to present witnesses on his own behalf.

Generally the issue of to grant or not to grant a continuance is a matter left to the sound discretion of a trial judge.<sup>1</sup> A trial judge's ruling on a Motion to Continue must not be disturbed by an appellate court in the absence of a clear abuse of discretion and resulting prejudice to the party whose motion was denied.<sup>2</sup>

This Court finds no abuse of discretion by the trial judge in denying Appellant's counsel's Motion to Continue the Trial for the reason that that motion was made on the day of trial. Ideally, motions to continue should be filed well in advance of the trial and give the opposing party the opportunity to respond and cancel its witnesses in the event that the motion would be granted. In this case, the State's witnesses were present and the State was ready to proceed to trial. Again, this Court finds no abuse of the trial court's discretion.

Secondly, Appellant contends that the trial judge abused his discretion in fining Appellant \$1,000.00 for this offense. This Court notes that the \$1,000.00 fine was well within the statutory parameters provided for by Arizona law for the commission of misdemeanor offenses.<sup>3</sup> Clearly, the sentence imposed by the trial judge was well within the statutory limits and less than the fine requested by Appellee, the State of Arizona. This Court finds no abuse of discretion.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the Phoenix City Court in this case.

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<sup>1</sup> State v. Cook, 172 Ariz. 122, 834 P.2d 1267 (App. 1990), citing, State v. Amarillas, 141 Ariz. 620, 688 P.2d 628 (1984).

<sup>2</sup> State v. Amarillas, Id.; State v. Jackson, 157 Ariz. 589, 760 P.2d 589 (App. 1988).

<sup>3</sup> A.R.S. Section 13-707(a) provides for a sentence of up to six months imprisonment for a class 1 misdemeanor. A.R.S. Section 13-802(a) provides for a fine to \$2,500.00 for a class 1 misdemeanor.

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IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all further and future proceedings in this case.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT